



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matters of R.W. and R.S.  
Department of Human Services

CSC Docket Nos. 2019-2691 and  
2019-2769

Discrimination Appeals

**ISSUED: MARCH 13, 2020** (SLK)

R.W., a Field Service Supervisor 1, Medical Assistance and Health Services, and R.S., a Quality Assurance Coordinator, with the Division of Medical Assistance appeal the decisions of the Department of Human Services' Chief of Staff, which substantiated R.W.'s allegation that R.S. subjected R.W. to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy), but did not substantiate other State Policy allegations that R.W. made. These appeals have been consolidated due to common issues presented.

By way of background, R.W. alleged that: (1) after suffering from anxiety, V.W., a Supervising Program Support Specialist, Assistance Programs, and R.S., harassed her on the basis of her disability by engaging in a series of bullying and ostracizing behaviors to purposely cause her additional stress; (2) after R.W. told V.W. that she suffered from emotional issues from childhood, and she had taken time off from work to deal with these issues, V.W. raised her voice at her and repeatedly asked V.W. if she was crazy; and (3) R.S., a supervisor, failed to report that V.W. repeatedly asked R.W. if she was crazy during a meeting with R.S. and V.W. and R.S. admitted that she knew R.W. had previously taken a stress leave to deal with childhood issues. The investigation found that the first allegation was unsubstantiated as V.W. and R.S. denied the allegation and indicated that the negative employment actions that they took toward R.W. were based on her poor

work performance and not for discriminatory reasons. The second allegation was substantiated as V.W. admitted to making the comments and the comments were heard on a recording. Further, the third allegation was substantiated as R.S. admitted that she knew R.W. had taken a stress leave, she was present at the meeting in question, and a recording indicated V.W. said three times in a row in a raised voice that R.W. was crazy, but R.S. did not report it to the Equal Employment Opportunity (EEO) Officer.

On appeal, R.W. describes her allegations of bullying and ostracizing behaviors by V.W. and R.S. which purposely caused her additional stress. The allegations include: (1) deliberate overloading and frequent criticism; (2) being ostracized from management meetings that she was previously in; (3) being demeaned and belittled in front of staff; (4) scrutiny of her work; (5) being subjected to unrealistic Performance Assessment Review (PAR) expectations no other staff had; (6) the inability to successfully complete her duties because she received no reply after she sought direction and clarification, purposeful withholding of information on certain cases for over a year causing her stress and huge backlogs, and intentional withholding of information which interfered with her ability to perform her work as well as other supervisors; (7) an inappropriate and false referral to the Employee Advisory Service; (8) disproportionate distribution of caseload; (9) sabotaged efforts to increase her knowledge, such as being denied training that other supervisors were provided; (10) planned or taken time off that was interfered with or rescinded; (11) not being provided the same amount of time for an update meeting when she was finally able to get one; (12) having meetings pushed back to the end of her shift effectively limiting the amount of time for discussion; and (13) inappropriate and false accusations causing a psychological fitness for duty evaluation and undue stress. R.W. provides a timeline and specific events and documentation to support her allegations. She requests compensatory damages for lost income, reasonable legal fees, and reimbursement for co-pays, doctor visits, counseling sessions and physical therapy.

R.S. challenges the finding that she did not report R.W.'s allegation regarding V.W. In this regard, she states that V.W. and she were noticing an increase in the amount of errors that R.W. was making so they started to review her cases to help her understand the issues. After reviewing a few cases, it was determined that they should meet with her daily so that their caseload would not get any further behind. On September 14, 2018, V.W. and R.S. met with R.W. to discuss a case that was determined to be "correct" by her, but the Bureau Chief indicated that the case was to be considered "unable to be determined." Therefore, R.W. was asked why the case was in the correct pile when the case note clearly indicated that it was incorrect. She responded that she disagreed with the Chief and processed the case as correct. R.W. also indicated that she was not going to change the decision. R.S. then informed R.W. that her behavior could be considered insubordinate and explained why the case was incorrect. After three weeks of reviewing R.W.'s cases

every day, R.S. informed her that she no longer could meet with her as she was getting behind on her work and, that as a supervisor, she would have to process the cases and have V.W. review them. R.W. then complained that this was unfair. R.S. instructed her that she pushed through 100 correct cases last month which R.S. felt were not thoroughly reviewed. R.W. stated that she just wanted to get her PAR over with because she knew she was going to fail. On September 26, 2018, R.S. and V.W. met with R.W. to go over her PAR and R.W. informed them that she contacted her union and was going to file a grievance concerning her PAR. She refuted every statement that was made during the meeting as V.W. went over the details as to why R.W. failed her PAR. R.S. was taking notes during the meeting and there were a lot of interruptions from R.W. in the meeting. R.W. felt that all R.S. and V.W. wanted was for her to fail. R.S. then stepped out of the meeting to obtain additional documentation to show R.W. the errors in the cases that she processed and did not hear V.W. call R.W. crazy. Therefore, she does not understand how she could be found to not be performing her supervisory duties in reporting the comment when she never heard it as she was not in the room at the time the comment was made.

In response, the EEO presents that the investigator conducted seven interviews and reviewed at least 85 relevant documents. R.W. alleged that V.W. and R.S. engaged in a series of bullying and ostracizing behavior after learning the she suffered anxiety causing her additional stress. V.W. and R.S. denied the allegations and stated that they did not consider R.W. to have a disability because she did not submit a doctor's note or any other evidence of a disability. Further, while they admitted that they took negative employment actions towards her, they stated these actions were based on R.W.'s poor work performance, such as removing her supervisory functions after consulting with human resources due to her 51 percent error rate. Additionally, there were no witnesses or other evidence to corroborate that V.W. and R.S. took negative action against R.W. to harass her based on her disability as opposed to address her poor work performance. V.W. admitted that she did ask R.W. if she was crazy and this was also confirmed by a recording which the investigator heard. While R.S. stated that she did not recall V.W. calling R.W. crazy, V.W. corroborated R.W.'s claim that R.S. was present at the time that V.W. made the statement. Further, the investigation did not have any corroboration that R.S. stepped out of the meeting at the time V.W. made the statement.

In reply, R.S. reiterates her previous assertion that she stepped out of the meeting and did not hear the comments. She attaches a summary that she provided to human resources for it to consider when disciplining R.W. due to her inability to perform the job duties. She believes that R.W.'s actions were in response to this discipline. R.S. also attaches an e-mail that R.W. sent her on September 21, 2018 thanking her for help. She argues that a review of this

material provides a better understanding of the history and the audio tape for the PAR meeting and not just listening to one moment of time.

## CONCLUSION

*N.J.A.C.* 4A:7-3.1(a) states, in pertinent part, that employment discrimination or harassment based upon disability is in violation of the State Policy. *N.J.A.C.* 4A:7-3.1(e) states, in pertinent part, supervisors shall immediately refer allegations of prohibited discrimination/harassment to the State agency's EEO. A supervisor's failure to comply with these requirements may result in administrative and/or disciplinary action, up to and including termination of employment. *N.J.A.C.* 4A:7.3-2(m)4 states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

In this matter, while R.S. and V.M. acknowledged that they took negative actions against the R.W., they indicated that these actions were taken due to R.W.'s poor work performance and not for any discriminatory reason. Additionally, the investigator conducted seven interviews and reviewed 85 relevant documents. However, there was not one witness nor one document that confirmed that the reason for R.S. and V.M.'s treatment of R.W. was based on her disability. While R.W. may have disagreed with the way that R.S. and V.M. treated her, disagreements between co-workers cannot sustain a violation of the State Policy. *See In the Matter of Aundrea Mason* (MSB, decided June 8, 2005) and *In the Matter of Bobbie Hodges* (MSB, decided February 26, 2003). Additionally, mere speculation, without evidence, is insufficient to substantiate a violation of the State Policy. *See In the Matter of T.J.* (CSC, decided December 7, 2016). Moreover, as her supervisors, R.S. and V.M. had the authority and responsibility to address R.W.'s performance issues. So long as the way they addressed those issues was not discriminatory, there cannot be a violation of the State Policy for those actions.

With respect to the allegation that R.S. did not perform her supervisory duty by failing to report V.W.'s statement that potentially violated the State Policy to the EEO, V.W. acknowledged that she made the statement in question and the statement can be heard on a recording. Additionally, R.S. acknowledges that she was at the meeting where the statement was made, and her voice can be heard on a recording that was taken during the meeting. Most importantly, while R.S. claimed that she stepped out of the meeting while the statement was made, V.W. confirmed R.W.'s allegation that R.S. was present in the meeting at the time of the statement. Further, R.S. is unable to provide any corroborating evidence to support her claim that she stepped out of the meeting at the time of the statement. Moreover, regardless of the history that led to V.W. making the statement, V.W.'s statement violated the State Policy and R.S.'s failure to report it to the EEO violated her duty as a supervisor under the State Policy. Accordingly, the investigation properly substantiated this allegation.

One other matter needs to be addressed. While her appeal in this matter is being denied for the reasons set forth above, R.W. requests compensatory damages for lost income, reasonable legal fees, and reimbursement for co-pays, doctor visits, counseling sessions and physical therapy. When a violation of the State Policy is found to have occurred, the State agency shall take prompt and appropriate remedial action to stop the behavior and deter its reoccurrence. The State agency shall also have the authority to take prompt and appropriate remedial action, such as moving two employees apart, before a final determination has been made regarding whether a violation of this policy has occurred. The remedial action taken may include counseling, training, intervention, mediation, and/or the initiation of disciplinary action up to and including termination of employment. *See N.J.A.C. 4A:7-3.1(g)2 and 3.* In other words, the State Policy is instructive in nature and remedial action can be taken against anyone who is found to have violated the Policy. However, under the State Policy, the Civil Service Commission (Commission) does not have the authority to award a compensatory damages and/or reimbursement of expenses.<sup>1</sup>

Therefore, the Commission finds that the EEO's investigation was prompt, thorough and impartial and R.W. has not met her burden of proof concerning allegations that V.W. and R.S. bullied and ostracized her based on her disability. Additionally, R.S. has not met her burden of proof that she did not violate the State Policy based on her failure to report a statement from another employee that potentially violated the State Policy to the EEO.

### **ORDER**

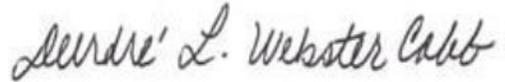
Therefore, it is ordered that these appeals be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

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<sup>1</sup> It is noted that "legal fees" can be awarded by the Commission to a successful appellant in such matters where the action taken by the appointing authority against the appellant is in bad faith or with invidious motivation. *N.J.A.C. 4A:2-1.5(b).* Such fees are only for such expenses accrued in the appeal to the Commission and not for fees accrued at the departmental level or post-Commission decision.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 12<sup>th</sup> DAY OF MARCH, 2020



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